

## REMARKS

The applicant's counsel wishes to thank to the Examiner for the time spent preparing the Office Action mail July 17, 2007. Claims 1-9, 11-16, 18, 26, and 28-40 were pending in the application at the time of the Office Action. Claims 1, 7, 11, 28, 32-34, and 38-40 are hereby amended, and claims 26 and 35 are canceled. Applicant submits that the claim amendments do not add new matter and entry thereof is respectfully requested. As a result, claims 1-9, 11-16, 18, 28-34, and 36-40 are pending and should be in condition for allowance. Reconsideration of the above-identified claims is now respectfully requested.

### **Claim Objections**

In the Office Action, claim 26 was objected to because it depended from canceled claim 25. As noted above, claim 26 has hereby been canceled. Therefore, Applicant respectfully requests that the objection be withdrawn.

### **Rejections Under 35 U.S.C. § 112**

In the Office Action, claims 36-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant submits that the amendments to claims 36-38 render claims 36-38 definite. Thus, Applicant respectfully requests that the rejection of claims 36-38 be withdrawn.

### **Rejections Under 35 U.S.C. § 102**

In the final Office Action, claims 1-6, 8, 9, 11-16, 18, 26, 28-34, and 40 were rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent Publication No. 2004/0147372 to Wang et al. ("Wang").

Wang fails to disclose the coarse weight reading, coarse weight reading categories, and pre-adjustment settings.

As amended herein, claim 1 recites a cushioned treadmill, comprising: a treadbase comprising a deck that moves when an exerciser exercises on the treadbase; and a self-adjusting cushioning assembly configured to (i) provide cushioning to movement of the deck; (ii) adjust

the amount of cushioning provided to movement of the deck; and (iii) ascertain a coarse weight reading for a user when the user is positioned on the deck, the self-adjusting cushioning assembly comprising a user input mechanism, a plurality of coarse weight reading categories, and a plurality of pre-adjustment settings such that the cushioned treadmill adjusts the amount of cushioning provided by the treadmill based upon the coarse weight reading, coarse weight reading categories, the pre-adjustment settings, and the input provided by the user.

The invention of claim 1 ascertains a coarse weight reading of a user, associates the coarse weight reading with an appropriate coarse weight reading category, and adjusts the amount of cushioning based on a pre-adjustment setting associated with the coarse weight reading category. These features of the present invention are illustrated in Applicant's Figures 7-10 and described in Applicant's application at page 23, paragraphs 56-57, and pages 26, paragraph 63, for example.

Wang fails to disclose a self-adjusting cushioning assembly that ascertains a coarse weight reading, associates the coarse weight reading with an appropriate coarse weight reading category, and adjusts the amount of cushioning based on a pre-adjustment setting associated with the coarse weight reading category. The Wang device does not ascertain a coarse weight reading in order to determine the appropriate amount of cushioning. Rather, Wang discloses a cushioning assembly that adjusts the amount of cushioning based on inputs provided by the user to the console. For instance, the operator can preset the cushioning force via the console such that the cushioning elements of Wang are constantly adjusted to the value predetermined by the operator. Wang, para. [0015] and abstract. Furthermore, Wang also teaches that "the operator can determine all parameters [of the treadmill], such as...the cushioning force via the control keys...on the console." Wang, para. [0016]). In contrast to cushioning elements of Wang that adjust the amount of cushioning based on the user inputs, the self-adjusting cushioning assembly as recited in claim 1 adjusts the amount of cushioning based on both user inputs and the coarse weight reading categories and their associated pre-adjustment settings. Thus, Wang fails to disclose or obviate claim 1.

Amended claim 7 recites a deflection sensor assembly that ascertains a coarse weight reading of the user, and amended claim 11 recites a self-adjusting cushioning assembly configured to ascertain a coarse weight reading of a user. Both claims 7 and 11 recite the coarse weight reading being associated with one of a variety or plurality of coarse weight reading

categories. Adjustment of the cushioning is based on the particular coarse weight reading category.

Additionally, claims 28, 32-34, and 38-39 each recite a "cushioning mechanism adapted to automatically adjust the amount of cushioning based on the pre-adjustment setting associated with the coarse weight reading category." Therefore, Wang does not disclose or obviate claims 1-9, 11-16, 18, 28-34, and 36-40.

### **Rejections Under 35 U.S.C. § 103**

In the final Office Action, claims 7 and 35-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wang in view of U.S. Patent No. 7,026,946 to Saunders et al. ("Saunders").

Wang and Saunders fail to disclose the pre-adjustment settings based on coarse weight reading and coarse weight reading categories of claims 7 and 36-40.

At the outset, Applicant notes that claim 35 has hereby been canceled, thus obviating the rejection of claim 35.

As noted above, Wang does not disclose the coarse weight reading being ascertained by a sensor or a deflection sensor assembly, the coarse weight reading being associated with one of a variety or plurality of coarse weight reading categories, each of the variety or plurality of coarse weight reading categories being associated with one of a variety or plurality of pre-adjustment settings, wherein the self-adjusting cushioning assembly or the cushioning mechanism automatically adjusts to the pre-adjustment setting associated with the coarse weight reading category. While Saunders does disclose an apparatus for identifying and categorizing the weight of a vehicle seat occupant, neither Saunders nor Wang disclose the weight or category being associated with a pre-adjustment setting for automatically adjusting the amount of cushioning.

Furthermore, a person of ordinary skill would have no reason or motivation to combine the teachings of Wang and Saunders. Specifically, Wang is directed to treadmills and Saunders is directed to vehicle seats, which are unrelated arts. Furthermore, treadmills are used for exercise and to improve physical fitness, whereas, vehicle seats are used for resting on while traveling in the vehicle. For at least these reasons, Wang and Saunders do not disclose or obviate claims 7 and 36-40.

With regard to claims 35-40, the Office Action stated that Wang and Saunders inherently provide a coarse weight reading based on the deflection of the deck when a user steps on the deck wherein the pre-adjustment setting provides an amount of cushioning within a range of available cushioning. Applicant respectfully notes, however, that inherency is not readily established. For example, as noted in MPEP § 2112, there must be rationale or evidence showing inherency. In particular, "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." *In re Rijckaert*, 9 F.3d 1531, 1534 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (emphasis in original). Moreover, the Court of Appeals for the Federal Circuit has noted that "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described by the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added).

In addition, "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Therefore, Wang and Saunders do not disclose or obviate claims 7 and 36-40.

Wang does not disclose the sensing assembly configured to ascertain a coarse weight reading of a user when the user first steps on the deck as claimed in claim 33.

One major advantage of Applicant's device is that the sensing assembly in one embodiment is configured to ascertain a coarse weight reading of a user when the user first steps on the deck. This adjustment occurs when the user first steps on the treadmill and again as the user uses the treadmill, in one embodiment. The inventive feature of a sensing assembly configured to ascertain a coarse weight reading of a user when the user first steps on the deck is not disclosed in Wang. Thus, Wang fails to anticipate or obviate claim 33.

## CONCLUSION

By this paper pending claims 1, 7, 11, 28, 32-34, and 38-40 have been amended for the sake of clarity or to more clearly point out the novel aspects of Applicant's invention. Claims 25 and 26 have been canceled. As a result, claims 1-9, 11-16, 18, 28-34, and 36-40 are pending and should be in condition for allowance. Reconsideration and allowance of the above-identified claims is now respectfully requested.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12<sup>th</sup> day of October, 2007.

Respectfully submitted,

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